

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

2007 APR 10 A 10: 27

Value Builders, Inc.

-vs-

North Shore Gas Company

Complaint as to damaged sewer pipe
repair in Grayslake, Illinois.

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07-0236

CHIEF CLERK'S OFFICE

RESPONDENT'S MOTION TO DISMISS

Now comes the Respondent, North Shore Gas Company ("North Shore"), by and through its attorney, Mark L. Goldstein, and moves the Administrative Law Judge ("ALJ") and the Illinois Commerce Commission ("Commission") to dismiss the captioned complaint filed by the Complainant, Value Builders, Inc., on April 2, 2007.

BACKGROUND

In its complaint, Complainant contends as a part of its dedication process in turning over the sewer system in the Whispering Oaks Subdivision it was developing in Grayslake, Illinois, it contacted North Shore after it was discovered that North Shore broke through the sewer main in the subdivision. Complainant requested that North Shore fix the sewer pipe, but North Shore has refused to do so because the Complainant failed to properly mark the sewer pipe. Complainant requests that North Shore pay for the damaged sewer pipe repair.

ARGUMENT

83 ILL. ADM. CODE 200 IS NOT APPLICABLE TO THE FILING OF A CLAIM FOR DAMAGES.

Complainant contends on the first page of the complaint, attached hereto as Exhibit A, that North Shore violated "83 Illinois Administrative Code Part 200." Part 200 contains the Commission's Rules of Practice and has nothing to do with a complaint for damages. Part 200 is irrelevant in the context of filing a claim for damages. The relevant section is Section 5-201 (220 ILCS 5/5-201).

THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMMISSION LACKS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT.

As noted above, Complainant seeks an unspecified amount of damages to repair a sewer pipe. Even if these allegations of the complaint were proven, Complainant would not be entitled to damages.

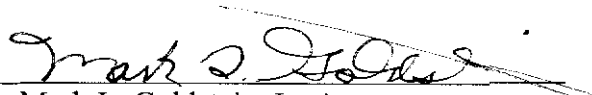
Section 5-201 requires that the Complainant's claim for damages be adjudicated in a court of law. The Commission has dismissed claims for damages on numerous occasions. For example, in the case of James Fransen v. Commonwealth Edison Company, Docket 06-0475, Order entered September 26, 2006, the Commission dismissed the claim for damages. The Commission concluded that Mr. Fransen could initiate an action to recover damages in the Circuit Court under Section 5-201.

The Commission's statutory interpretation of Section 5-201 is based on longstanding Illinois judicial precedent. See e.g. Barry v. Commonwealth Edison Co., 374 Ill. 473, 29 N.E. 2d 1014 (1940).

CONCLUSION

Based upon all of the foregoing, Respondent, North Shore Gas Company, respectfully requests that the complaint filed by Value Builders, Inc. against North Shore Gas Company on April 2, 2007 be dismissed with prejudice.

Respectfully submitted,
THE PEOPLES GAS LIGHT AND COKE COMPANY

By: 
Mark L. Goldstein, Its Attorney

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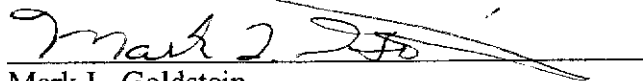
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Value Builders, Inc.)	
-vs-)	07-0236
North Shore Gas Company)	
)	
Complaint as to damaged sewer pipe)	
in Grayslake, Illinois.)	

NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on April 4, 2007, I filed with the Chief Clerk of the Illinois Commerce Commission my Appearance and Respondent's Motion to Strike, in the captioned docket, copies of which is attached hereto, and are hereby served upon you.


Mark L. Goldstein
Attorney for Respondent
108 Wilmot Road, Suite 330
Deerfield, IL 60015
(847) 580-5480


CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2007, I served copies of the attached Respondent's Motion to Strike and my Appearance n behalf of the Respondent in the above-captioned docket, by causing copies thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties below:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Subodh K. Raniwala
Value Builders, Inc.
4369 RFD
Long Grove, IL 60047

Ms. Claudia Sainsot
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein